

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEVEN JAMES KRIER,

Petitioner,

v.

ADAM FORTNEY,

Respondent.

CASE NO. C20-992 RSM-BAT

ORDER ON OBJECTIONS TO REPORT
AND RECOMMENDATION

This matter is before the Court for consideration of the Report and Recommendation (“R&R”) of United States Magistrate Judge Brian A. Tsuchida recommending that this action be dismissed with prejudice and that a Certificate of Appealability (“COA”) be denied. Dkt. #17. Petitioner objected to the R&R and additionally sought to amend his petition or to have his claims dismissed without prejudice. Dkt. #19. Having reviewed the matter, the Court dismisses Petitioner’s claims with prejudice.

State pre-trial detainee Steven James Krier filed a 28 U.S.C. § 2254 Petition seeking release from his confinement in the Snohomish County Jail. Dkt. #8. However, Petitioner was subsequently released from the custody of the Snohomish County Corrections Bureau and transported to King County where he is now held in the custody of the King County Department of Adult and Juvenile Detention (“DAJD”). Dkt. #17 at 2. Noting this and additional deficiencies, the Court ordered Petitioner to show cause why his Petition for release from

1 Snohomish County was not moot, whether he had properly exhausted state court remedies prior
2 to filing this action, and why his Petition should not be dismissed with prejudice. Dkt. #14.

3 After receiving Petitioner's responses to the Court's show cause orders,¹ Judge Tsuchida
4 entered a R&R. Dkt. #17. Therein, Judge Tsuchida noted that Petitioner's § 2254 Petition was
5 more properly considered as a 28 U.S.C. § 2241 Petition because Petitioner had not yet been
6 convicted of a state crime and concluded that Petitioner had not exhausted his state court
7 remedies with regard to his detention by King County DAJD, as required for the Court to consider
8 Petitioner's § 2241 claims. *Id.* at 5–6. The R&R also noted that the Court could no longer grant
9 the relief Petitioner sought in his Petition because he was no longer held by Snohomish County
10 and concluded that Petitioner's claims related to Snohomish County were therefore moot. *Id.* at
11 6–7. Lastly, the R&R advised that no COA should issue as jurists of reason could not disagree
12 on the Court's resolution of the matter. *Id.* at 8.

13 Petitioner's objections to the R&R do not dissuade the Court from following the
14 recommendation of Judge Tsuchida. Petitioner does not demonstrate factual or legal error in the
15 R&R. *See* Dkt. #19. Further, Petitioner all but concedes that the circumstances of his case have
16 changed, and that dismissal is warranted. While Petitioner makes valiant efforts to save his
17 claims, it is clear that Petitioner is mainly concerned with assuring that his ability to bring future
18 actions is not compromised. *See generally id.* Petitioner's most relevant requests, then, are for
19 leave to amend his Petition or to have his claims dismissed without prejudice so that he may
20 pursue them at a later time. While the Court appreciates the concern, Petitioner does not convince
21 the Court that any such relief is necessary.

22
23 ¹ Judge Tsuchida actually issued two orders to show cause, one before the Court knew that
24 Petitioner had been released from Snohomish County, Dkt. #10, and one after, Dkt. #14.
Petitioner responded to both. Dkts. #15 and #16.

Petitioner's claims related to his ongoing detention in Snohomish County have certainly been mooted by his release from Snohomish County's custody. Habeas claims related to that period of detention are therefore moot and properly dismissed with prejudice.² Habeas claims related to Petitioner's detention in King County were not before the Court and the Court has not addressed the legal merits of any such claims. Petitioner indicates his belief that his transfer to King County was due to him missing a court date while he was in custody in Snohomish County, that his King County detention will now cause him to miss court dates in Snohomish County, and that King County and Snohomish County will ping-pong him back and forth, holding him indefinitely. Dkt. #19. But Petitioner's single instance does not yet demonstrate that this is the case. As a result, his habeas claims as to his detention in King County are not related to his habeas claims related to his detention in Snohomish County and amendment of Petitioner's Petition is not appropriate.

Lastly, the Court agrees with the R&R that Petitioner should be denied a COA. Reasonable jurists could not "disagree with this Court's evaluation of [Petitioner's] habeas claims" and would not "conclude that the issues presented deserve encouragement to proceed further." Dkt. #17 at 8. Petitioner may seek further relief from the United States Court of Appeals for the Ninth Circuit.

Accordingly, having reviewed the R&R, Petitioner's objections thereto, and the remainder of the record, the Court finds and ORDERS that:

1. The Court ADOPTS the Report and Recommendation (Dkt. #17).
2. Petitioner's objections (Dkt. #19) are DENIED.

² To perhaps assuage Petitioner's fears, the Court is not aware of any authority indicating that the factual circumstances related to Petitioner's Snohomish County detention, to the extent relevant to future claims Petitioner may bring, are affected by dismissal of Petitioner's legal habeas claims related to this period of his Snohomish County detention.

1 3. Petitioner's habeas petition (Dkt. #8) is DISMISSED with prejudice and issuance of a
2 Certificate of Appealability is DENIED.

3 4. The Clerk is DIRECTED to send copies of this Order to the parties.
4

5 DATED this 12th day of April, 2021.
6

7 
8

9 RICARDO S. MARTINEZ
10 CHIEF UNITED STATES DISTRICT JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24